HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 442 of 2006

Pradeep Kumar s/o Khestrapal
Village Suhargini Post Amboli
P.S. Nagal, District Saharanpur

..... Applicant

Versus

1. State of Uttaranchal
2. Smt. Seema w/o Sri Pradeep Kumar
   R/o village Rohalki Dayalpur, P.S. Bhagwanipur
   Tehsil Roorkee, District Haridwar ..... Respondents

Dated: 11.12.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Vivek Shukla for the applicant and Sri Lokpal Singh Counsel for the respondent no.2.

By the present application under Section 482 Cr.P.C. the applicant has prayed for quashing of the order dated 10.4.2006 passed by the additional Family Judge, Roorkee in Misc. Case No. 12 of 2006, Smt. Seema Vs. Pradeep Kumar, thereby recalling of the order dated 28.11.2005 in Original case No. 99 of 2005.

Briefly stated the respondent no.2 has filed an application under section 125 Cr.P.C. for grant of maintenance against the applicant Pradeep Kumar. According to the respondent no. 2 she was married with applicant on 9.2.1999 according to the Hindu rites. She has alleged that after the marriage applicant Pradeep Kumar and his family members started treating her

with cruelty for want of dowry and ultimately turned her out of the house. The case was fixed on 28.11.2005 for evidence but the respondent no. 2 could not appear in the court and her application under section 125 Cr.P.C. was dismissed in default.

Respondent no. 2 filed an application for restoration of the case and recalling of the order dated 28.11.2005. The application was allowed by the Additional Judge, Family Court vide impugned order dated 10.4.2006. Feeling aggrieved the present application under section 482 Cr.P.C. has been filed.

Restoration application has been filed by Smt. Seema, respondent no. 2 supported by her affidavit. Opposite Party Pradeep Kumar has filed objection stating therein that there is no provision for restoration under Chapter IX Cr.P.C. Although the respondent no. 2 was not precluded by law to file second application for maintenance under section 125 Cr.P.C. if her first application has been dismissed in default. However, to prevent multiplicity of the litigation, the Additional Judge, Family Court was justified by recalling the order-dated 10.4.2006.

In the interest of litigants the legislature has empowered the Family Court to make its own procedure. Sub section (3) of Section 10 of the Family Courts Act, 1984 reads as under:

(3) *Nothing in sub section (1) or sub section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other.*

The Apex Court has held in (2001) 8 SCC 151, M.S. Grewal vs. Deep Sood as under:

"Law Courts will lose their efficicacy if they cannot possibly respond to the need of the society- technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."

In view of the above, the Judge, Family Court was prefectly justified by recalling the dismissal order and restoring the case in its original number.

The application under section 482 Cr.P.C. has no merit and is hereby dismissed.

Dated: 11.12.2006 **Rajesh Tandon, J.**
*Dhyani